

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of Petition :
 of :
ANNEI HOLDING CORP. :
SKYVIEW HOUSING CORP. :
29-44 NORTHERN CORP. :
ALL THREE REALTY CORP. :
for redetermination of deficiency or :
for refund of franchise tax under :
Article 9-A of the tax law for the :
fiscal year ended June 30, 1971. :

The four subject corporations having filed petition for redetermination of deficiencies under Article 9-A of the tax law for the fiscal year ended June 30, 1971 and a hearing having been held on May 8, 1973 before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at the office of the State Tax Commission, 80 Centre Street, New York City, at which hearing Herman B. Zipser, Secretary of the four corporations and Attorney, appeared personally and testified, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) The parent corporation, Annel Holding Corp., requested permission to file a combined return on behalf of itself and three wholly-owned subsidiaries, Skyview Housing Corp., 29-44 Northern Corp. and All Three Realty Corp. Such permission was denied by the Corporation Tax Bureau and tax liability was computed on an individual basis as follows:

Annel Holding Corp.

Entire net income	\$	23,200.24
Tax at 9%		2,088.02
Plus subsidiary capital tax		233.08
Total tax		2,321.10
Tax paid		4,636.87
Credit		2,315.77

SKYVIEW HOUSING CORP.

Total capital	\$5,279,108.96
Tax at .3665 mills	1,934.79
Tax paid	1,337.50
Added tax due	597.29

29-44 NORTHERN CORP.

Entire net income	\$ 9,492.06
Tax at 9%	854.29
Tax paid	112.50
Added tax due	741.79

ALL THREE REALTY CORP.

Entire net income	\$ 20,568.15
Tax at 8%	1,645.45
Tax paid	1,274.46
Added tax due	370.99

Annel Holding Corp. received a check for the net refund due after application of its credit against the added taxes due from the other three corporations.

An erroneous rate of 9% was used in computing the tax on entire net income for Annel Holding Corp. and 29-44 Northern Corp. The effective rate of tax for the fiscal year ended June 30, 1971 was 8%. Accordingly, Annel Holding Corp. and 29-44 Northern Corp. are entitled to respective tax credits of \$232.00 and \$94.93, plus interest.

(2) The four corporations are engaged in owning and operating real estate. Annel Holding Corp. owns gas station properties and commercial buildings; Skyview Housing Corp. owns two apartment houses, the mortgage financing of which was obtained through the New York City Housing and Development Administration under the auspices of the Mitchell-Lama law; 29-44 Northern Corp. and All Three Realty Corp. own commercial buildings.

(3) Section 211.4 of Article 9-A of the tax law reads in part:

"In the discretion of the tax commission, any taxpayer, which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations . . . may be required or permitted to make a report on a combined basis covering any such other corporations"

The State Tax Commission hereby

DECIDES:

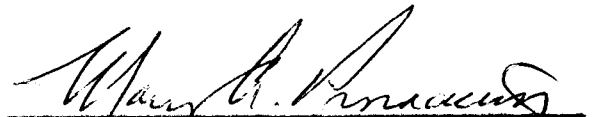
(A) Each of the four corporations is engaged in real estate operations, the results of which are more properly reflected on an individual basis. A combined return would produce a distorted result, in that losses of unprofitable corporations would be offset against income of the other corporations. Individual corporations engaged in the ownership of real properties do not constitute a unitary business, since the profit or loss of each corporation is primarily due to the operation of the specific real estate parcels which each corporation holds, instead of being due to intercompany transactions. It is not the policy of the Tax Commission to permit or require a combined return where taxation on an individual basis produces a more proper result.

(B) Computation of tax liability on an individual basis is affirmed. Annel Holding Corp. and 29-44 Northern Corp. are entitled to respective tax credits of \$232.00 and \$94.93, plus interest, due to correction of errors as indicated at (1) above.

Dated: Albany, New York

this 2nd day of August 1938.

STATE TAX COMMISSION


President


Commissioner


Commissioner